

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

DIANE CORMIER, GUARDIAN OF)
MARCEL C.,)
)
Plaintiff,)
)
v.) Civil Nos. 04-CV-00141 (JAW)
) 91-CV-321-P-C
MAINE DEPARTMENT OF HEALTH)
AND HUMAN SERVICES,)
)
Defendant.)

**ORDER ACCEPTING THE MASTER'S¹
FINDINGS AND CONCLUSIONS**

On July 16, 2004 the Plaintiff filed in State Court a Petition for Relief from Agency Action seeking review of the Acting Commissioner's decision and making an independent claim for relief seeking a declaration of rights and obligations under an applicable Consent Decree entered in *CAB v. Nichols*, Civ. No. 91-321-P-C (U.S.D.C., Me.), and specific performance of the Consent Decree in respect to responsibility for payment of fees for psychological services afforded Plaintiff's ward. The case was removed to this Court on Joint Motion of the parties and was assigned to the Special Master in the Nichols case as Master by the Court's Order of September 20, 2004 (Docket Item No. 3).

¹ Plaintiff's counsel notes, "as a matter of clarification" his belief that Mr. Sundram acted herein as a Referee and not in his capacity as Special Master in *CAB v. Nichols*, Civ. No. 91-321-P-C (U.S.D.C. Me.)

For purposes of further clarification, this Court notes that both the Joint Motion for Referral (Docket Item No. 2) and the Order of Reference (Docket Item No. 3), drafted by counsel, consistently identify Mr. Sundram as "Special Master." In the former the parties jointly request "that this matter be referred to Special Master Clarence J. Sundram pursuant to Fed. R.Civ. P. 53 and the attached draft Order of Reference." Joint Motion for Referral, at 2. The proposed Order of Reference does, indeed, order the referral of the matter to Mr. Sundram, "to serve as master," and so identifies him throughout.

This crisis of nomenclature notwithstanding, it is apparent that the parties intended Mr. Sundram to serve in this matter as a master pursuant to Fed. R. Civ. P. 53 and that he has so acted. The Court has treated him as serving in that capacity; inter conjunctus personas.

The Master entered and served on counsel herein the Master's Findings and Conclusions (Docket Item No. 4) on November 9, 2004 and the twenty (20) day period for filing of objections thereto pursuant to Fed. R. Civ. P. 53(g)(2) has expired without any such objections being filed. See Docket Item Nos. 5 and 6. The Court has now conducted a de novo review of the record made before the Master and of the Factual Findings and Legal Conclusions of the Master.

The Court now **FINDS** no error in those findings and conclusions, and it is, therefore, **ORDERED** that the Master's Findings and Conclusions (Docket Item No. 4) be, and they are hereby, **ADOPTED** and **AFFIRMED** and it is **FURTHER ORDERED** that the Decision herein of the Acting Commissioner is **REVERSED** and that the Department refund to the Plaintiff the payment of Four Hundred Dollars (\$400.00) for psychological services previously made from the representative payee account of Marcel C. and that within sixty (60) days of the date of this Order the Department develop and adopt guidelines to assist employees acting as representative payees for class members in *Consumer Advisory Board v. Glover* in carrying out their responsibilities, consistent with the rights and entitlements contained in the Community Consent Decree. The Court concurs in the Master's advice to the Department that in developing such guidelines, the Department should consult with all appropriate stakeholders, including the Consumer Advisory Board, provider agencies, advocates and counsel to the Plaintiff class. Any decision about payment of the remaining debt of Three Hundred Dollars (\$300.00) out of the representative payee account should be made pursuant to the guidelines adopted.

The Court **FINDS** that the first payment of Twelve Hundred Dollars (\$1,200.00) out of SSI funds for the psychological evaluation of Marcel C. did not violate either the Community Consent Decree or the fiduciary responsibilities of the representative payee and said payment is hereby **APPROVED**. See Master's Findings and Conclusion, at 12-13.

/s/Gene Carter
Gene Carter
Senior United States District Court Judge

Dated at Portland, Maine this 1st day of December, 2004.

Plaintiff

DIANE CORMIER,
GUARDIAN OF MARCEL C

represented by **BRUCE A. MCGLAUF LIN**
PETRUCCELLI, MARTIN &
HADDOW, LLP
PO BOX 17555
PORTLAND, ME 4112-8555
207-775-0200
Email:
bmcglauflin@petrucellimartin.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

HEALTH & HUMAN
SERVICES, MAINE DEPT OF

represented by **CHRISTOPHER LEIGHTON**
MAINE DEPARTMENT OF
HUMAN SERVICES
STATE HOUSE STATION 6
AUGUSTA, ME 04333
626-8540
Email: chris.leighton@maine.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

